

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

BRENT SWALLERS ON BEHALF)	
OF ABIGAIL SWALLERS,)	
)	
Petitioner,)	
vs.)	No. 1:15-cv-01560-TWP-MJD
)	
MARILYN MOORES, et al.,)	
)	
Respondents.)	

**ORDER DISMISSING NEXT FRIEND
CLAIM(S) ON BEHALF OF ABIGAIL SWALLERS**

I.

A neglect or similar petition involving Abigail Swallers, a minor, has been instituted in the Juvenile Division of the Marion Superior Court. That action has been docketed as No. 49D09-1509-JC-2845.

Brent Swallers, the father of Abigail Swallers, has filed a next friend petition for writ of habeas corpus on behalf of Abigail Swallers. He has done so without counsel, however, which is fatal to his effort. By way of explanation, the Seventh Circuit Court of Appeals has recently reiterated that a pro se litigant may not act as next friend. In *Jones v. Griggs*, 612 F. App'x 395, (7th Cir. 2015), the petitioner step father, Key, acting pro se, petitioned the as next of friend. The appellate court ruled as follows:

Key asserts that he may act as Jones's next friend because he has a significant relationship with her, thus satisfying a requirement for acting as next friend. *See Whitmore v. Arkansas*, 495 U.S. 149, 163–64, 110 S. Ct. 1717, 109 L.Ed.2d 135 (1990); *T.W. by Enk v. Brophy*, 124 F.3d 893, 897 (7th Cir. 1997). But even if we assume that Key—who is Jones's ex-stepfather—meets the “substantial relationship” requirement to act as next friend, he is not a lawyer and thus cannot represent Jones as next friend without counsel. *See* 28 U.S.C. § 1654; Fed.R.Civ.P. 17(c); *Elustra v. Mineo*, 595 F.3d 699, 705–06 (7th Cir. 2010) (explaining rule

prohibiting next friend from litigating pro se on behalf of another); *Navin v. Park Ridge Sch. Dist.* 64, 270 F.3d 1147, 1149 (7th Cir. 2001) (forbidding non-lawyer parent from suing without counsel on behalf of child); *Lewis v. Lenc-Smith Mfg. Co.*, 784 F.2d 829, 830–31 (7th Cir. 1986) (barring lay advocates).

Jones v. Griggs, 612 F. App'x 395, 396 (7th Cir. 2015).


Accordingly, the next friend petition for writ of habeas corpus on behalf of Abigail Swallers is dismissed without prejudice.

II.

If Brent Swallers appears by counsel with respect to that petition, he may concurrently seek to reinstate the next friend petition. For the present, no final judgment shall issue at this time as to the dismissal of the next friend petition filed by Brent Swallers without counsel on behalf of Abigail Swallers. Mr. Swaller shall report his efforts and intentions to the Court in this regard within **60 days** of the date of this entry.

IT IS SO ORDERED.

Date: 10/19/2015



TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

Distribution:

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